Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000460 08/11/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

AIDA RENTA TRUST, et al. PAUL J MOONEY

v.

MARICOPA COUNTY ROBERTA S LIVESAY

UNDER ADVISEMENT RULING

Defendant's Motion For More Definite Statement

It does not appear to the Court that the County is uninformed as to the allegations of the Complaint or that it is unable to prepare a defense. *See Reiniger v. Besley*, 16 Ariz. 161, 163 (1914) ("Where the mover is already in possession of the facts," motion for more definite statement is to be denied). The Supreme Court has very recently affirmed the notice pleading rule as it has been traditionally applied in Arizona, rejecting the move by the federal courts to impose a more stringent standard. *Cullen v. Auto-Owners Ins. Co.*, CV-07-0402-PR ¶ 6-7 (2008) (rejecting *Bell Atlantic Corp. v. Twombley*, 127 S.Ct. 1955 (2007)).

Defendant's Motion To Dismiss

It appears from the pleadings Defendants are asserting that this matter is time-barred (in that it was filed after the expiration of the statute of limitations) or that it is premature (in that there has been no final judgment in the original *Aida Renta* case). The oral argument seems to have focused on the prematurity argument. The time-bar argument is based on the supposedly "voluntary," "discretionary" nature of the assessor's revision of the 1995 and 1996 tax rolls in advance of the Court of Appeals' ruling, which, according to Defendants, eliminated any ministerial obligation to change the rolls for all purposes should the Court of Appeals so rule. This is not the case. The assessor is obligated to perform, and if necessary this Court to enforce

through mandamus, any acts ordered by the Court of Appeals or inherently deriving as a ministerial matter from its order. The voluntary performance of part does not nullify Plaintiffs' right to the whole. The Court notes that the case law surrounding the notice of claim statute is in a state of flux, with several Court of Appeals decisions ameliorating the strictures of *Deer Valley Unified School Dist. No. 97 v. Houser*, 214 Ariz. 293 (2007). *See Yollin v. City of Glendale*, 2008 WL 2971505 (Div. 1, Aug. 5, 2008); *Backus v. State*, 2008 WL 2764601 (Div. 1, July 17, 2008); *Jones v. Cochise County*, 2008 WL 2570118 (Div. 2, June 30, 2008). In light of this, the Court does not deem it necessary to rule on the time-bar issue at this time. Should the situation, as explained below, require the issue to be revisited, there may be further clarity.

Until the parties and the Court receive the ruling of the Court of Appeals, the County, and for that matter this Court, cannot know what action is required. Pending the outcome of the appeal, it cannot be said that Defendants have an obligation to revise the LPVs *now* and, if necessary, undo their action later; they have the right to wait until the outcome is known. The Court sees no reason to dismiss this cause number, however. There has been expense incurred by both sides in bringing the case this far, work that would have to be duplicated if Plaintiffs prevail on appeal and the County, standing on its arguments here, declines to make forward changes in the tax roll. If the case becomes moot, either because the County prevails on appeal or because it fully complies with an adverse ruling, the parties can so inform the Court at the appropriate time.

Therefore, IT IS ORDERED:

1. Denying Defendant's Motion For More Definite Statement.

2. Denying Defendant's Motion To Dismiss.